



Appeal Decision

Site visit made on 24 August 2010

by **Roger Mather MA Dip Arch RIBA FRTPi**

an Inspector appointed by the Secretary of State
for Communities and Local Government

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Decision date:
15 September 2010

Appeal A-Ref: APP/Q1445/A/10/2121011

2A Basement Flat, Wykeham Terrace, Brighton BN1 3FF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is brought by Miss Pamela Webb against the decision of Brighton & Hove City Council.
- The application (Ref: BH2009/00979) dated 15 May 2009, was refused by notice dated 21 July 2009.
- The development proposed is erection of 1 No galvanised back to wall ladder and 2 No sections of railing to the top of the ladder; these are connected to the party wall of No 1 Wykeham Terrace for fire escape access.

Appeal B-Ref: APP/Q1445/E/10/2121013

2A Basement Flat, Wykeham Terrace, Brighton BN1 3FF

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990, as amended by the Planning and Compensation Act 1991, against a refusal to grant listed building consent.
- The appeal is brought by Miss Pamela Webb against the decision of Brighton & Hove City Council.
- The application (Ref: BH2009/00980) dated 15 May 2009, was refused by notice dated 21 July 2009.
- The works proposed are erection of 1 No galvanised back to wall ladder and 2 No sections of railing to the top of the ladder; these are connected to the party wall of No 1 Wykeham Terrace for fire escape access.

Application for Costs

1. An application for costs is made by Miss Pamela Webb against Brighton and Hove City Council. This application is the subject of a separate Decision.

Decisions

Appeal A-Ref: APP/Q1445/A/10/2121011

2. I allow the appeal and grant planning permission for the installation of a galvanised back to wall ladder and railing at 2A Basement Flat, Wykeham Terrace, Brighton BN1 3FF in accordance with the terms of the application (Ref: BH2009/00979) dated 15 May 2009, and the plans submitted with it, subject to the following condition:
 1. The galvanised wall ladder and associated fittings hereby permitted shall be removed within one month of the date of failure to submit within one month of date of this decision a painting scheme for the written approval of the local planning authority and the scheme shall include a timetable for its

implementation; the approved scheme shall be carried out in accordance with the approved timetable and thereafter retained in that colour.

Appeal B-Ref: APP/Q1445/E/10/2121013

3. I allow the appeal and grant listed building consent for installation of a galvanised back to wall ladder and railing at 2A Basement Flat, Wykeham Terrace, Brighton BN1 3FF in accordance with the terms of the application (Ref: BH2009/00980) dated 15 May 2009, and the plans submitted with it, subject to the following condition:
 1. The galvanised wall ladder and associated fittings hereby authorised shall be removed within one month of the date of failure to submit within one month of the date of this decision a painting scheme for the written approval of the local planning authority and the scheme shall include a timetable for its implementation; the approved scheme shall be carried out in accordance with the approved timetable and thereafter retained in that colour.

Procedural Matters

4. On 23 March 2010, the Government published Planning Policy Statement 5: Planning for the Historic Environment (PPS5). This replaces Planning Policy Guidance: Planning and the Historic Environment (PPG15), which is cancelled. I consider that insofar as is relevant to these appeals, there is no material change in national policy between the new PPS5 and PPG15 and there is no need to seek further views of the parties on the relevance of the change to their case. My consideration of the appeal is on that basis.
5. I have altered the description in the formal decision from that used on the application forms, amended by the Council, to more accurately reflect the precise proposals rather than the use and retrospective nature of the works.

Main Issues

6. I consider that these appeals raise two main issues. The first is whether the works carried out preserve the character of the building as one of special architectural or historic interest and whether they preserve or enhance the character or appearance of the Montpelier and Clifton Hill Conservation Area. The second is the effect on the living conditions of the occupier of the ground floor flat at 2 Wykeham Terrace, particularly in relation to outlook, loss of privacy and fear of crime.

Reasons for Decisions

7. For clarity, the relevant considerations are found in the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended, which requires, when considering whether to grant listed building consent for any works, and in considering whether to grant planning permissions for developments which affect a listed building or its setting, special regard shall be paid to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. The Act also states that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of conservation areas.

8. Relevant development plan policies reflect the statutory requirements. While such policies do not apply to decisions on applications for listed building consent, the development plan is generally regarded as a material consideration and I shall treat it in that context. However, the planning application (appeal A) must be determined in accordance with development plan policies, unless material considerations indicate otherwise.

Whether the character of the listed building and the character and appearance of the Montpelier and Clifton Hill Conservation Area would be preserved

9. The appeal dwelling is a two-bedroom basement flat, which lies within a two/three storey over basement terrace, all of which, including attached walls and railings, is listed in grade II. The principal elevation is of exceptional design but the backs of these properties make no material contribution to the architectural quality of the terrace; the wall ladder and railing, already installed, and are concealed within a small rear courtyard.
10. The works are plainly not wholly in keeping with the historic qualities of the listed building and the simple charm of the brick wall to which the ladder is fixed. It is though discreetly positioned in a corner of the courtyard, alongside the dwelling and is of neat appearance. The alternative means of escape would be either altering the layout of the flat, upgrading the fire detection and alarm systems, and internal fireproofing of walls and doors, or locating a fire escape staircase away from the house. The appellant contends that works to the layout of the flat or works to the building to allow re-entry would introduce undesirable permanent changes to the building's fabric and I am inclined to agree with that. I am told that a fire escape staircase elsewhere in this small courtyard would impede access to a mains sewer hatch.
11. Consequently, while the wall ladder and railing may not be the only option and not entirely in keeping with the character of the listed building, in all the circumstances of this particular case, I consider that it presents the most practical option, balancing a minimal visual impact with the demands of adequately safeguarding the occupants of the building. Accordingly, I find that the slight harm to the character of the building arising from the works is outweighed by the other considerations above, which will assist in the safe and beneficial use of the building. Its siting out of public view would have no damaging effect on the character or the appearance of the Conservation Area.
12. I therefore conclude on the first issue that the works unacceptably harm neither the character of the listed building nor its historic surroundings. It flows from this that I find no conflict with my duties under the Act, which is reflected in policies HE1 and HE6 of the Brighton and Hove Local Plan 2005, PPS5 and the Council's supplementary planning guidance in relation to fire precaution works to historic buildings.

Effect on living conditions

13. The Council is supportive of the concerns expressed by the occupant of the ground floor flat at 2 Wykeham Terrace in relation overlooking and loss of privacy and a possible security risk. However, the visit confirmed that the bedroom window alongside the wall ladder is obscure glazed and direct overlooking is avoided. While I understand that the perception of overlooking

may cause concern, there is no requirement to use the ladder except as a form of escape from the basement flat below. Fear of crime can be a material planning consideration but, in this particular case, no objective evidence has been put to me to support such a fear. Unfounded fear by itself is not a reason to justify the withholding of planning permission.

14. While the works visible from the kitchen and roof terrace of the ground floor flat, the visit confirmed that its appearance would be sufficiently unobtrusive to have no significant impact on outlook, provided it is painted to harmonise with rainwater goods and other pipe work. I therefore conclude on the second issue that subject to a painting scheme for the back to wall ladder and railing, the living conditions of the occupant of the ground floor flat would not be unduly harmed by its retention. That would satisfy the requirements of Local Plan Policies QD14 and QD27.

Conditions

15. The Council has not suggested any conditions, which it considers appropriate to impose, but the appellant considers that planning permission and listed building consent may reasonably include a condition to paint the ladder an agreed colour, within one month. I have been influenced in my decision by the appearance of the unpainted ladder from the ground floor flat and in order to minimize the visual impact in perpetuity, I shall impose a condition requiring it to be painted an agreed colour and retained in that colour.

Other matters

16. I have considered all of the other matters brought to my attention, including the history and conflicting evidence as to whether the ladder, as installed, would meet the requirements of other legislation, including the Building Regulations. Compliance with other legislation is a matter for the City Council. No other matter raised adds up to a compelling argument of such significance as to outweigh the considerations that led to my conclusions on the main issues. Consequently, I further conclude that these appeals should succeed.

Roger Mather
INSPECTOR